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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

METRO FUEL LLC, a Delaware limited  
liability company,

Plaintiff,

vs.

CITY OF SAN FRANCISCO, a municipal  
corporation, COUNTY OF SAN  
FRANCISCO, a subdivision of the State  
of California, CITY AND COUNTY OF  
SAN FRANCISCO, a chartered California  
city and county and DOE 1 through DOE  
10,

Defendants.

Case No. C07-6067 JSW

**DECLARATION OF GAIL R. STEIN IN  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR A PRELIMINARY INJUNCTION**

Hearing Date: November 14, 2008

Time: 9:00 a.m.

Place: Courtroom 2, 17<sup>th</sup> Floor

Trial Date: October 26, 2009

1 I, GAIL R. STEIN, declare:

2 1. I have personal knowledge of the matters stated herein, except for those matters set  
3 forth on information and belief, which I believe to be true, and if called to testify, I can and will  
4 testify competently as to all matters set forth herein.

5 2. I am the Manager for Property Contracts and Development for the San Francisco  
6 Municipal Transportation Agency ("SFMTA"). I have held this position since January 2008. Prior to  
7 my current position, I was an aide to former Supervisor Barbara Kaufman from January 1996 to  
8 February 1999, a Principal Administrative Analyst for the SFMTA from June 1999 to November  
9 2004 and then again from November 2005 to January 2008, and Chief Financial Officer at the San  
10 Francisco District Attorney's Office from November 2004 to November 2005.

11 3. As Manager for Property Contracts and Development for the SFMTA, I am the  
12 primary Project Manager for the SFMTA's Transit Shelter Advertising Agreement. I also have many  
13 other job responsibilities in the SFMTA's Real Estate unit.

14 4. **San Francisco Municipal Transportation Agency.** In November 1999, the  
15 voters approved Proposition E, which created the San Francisco Municipal Transportation Agency.  
16 Proposition E was codified as Article VIIIA of the San Francisco Charter. In 2002, the Department  
17 of Parking and Traffic became part of the SFMTA, which also includes the San Francisco Municipal  
18 Railway ("MUNI"). Under Article VIIIA, the SFMTA has "exclusive charge of the construction,  
19 management, supervision, maintenance, extension, operation, use, and control of all property, as well  
20 as the real, personal, and financial assets of the Municipal Railway; and [has] exclusive authority over  
21 contracting, leasing, and purchasing by the Municipal Railway." San Francisco Charter §  
22 8A.102(b)(1).

23 5. **San Francisco Municipal Railway ("MUNI").** MUNI was founded in 1912 and  
24 is one of the oldest municipally owned transit agencies in the United States. MUNI operates 24 hours  
25 a day, 7 days a week. MUNI's fleet of vehicles is one of the most diverse in the world, operating  
26 historic streetcars, modern light rail vehicles, diesel buses, alternative fuel vehicles, electric trolley  
27 coaches and the world famous cable cars.

6. According to the SFMTA's Short Range Transit Plan for fiscal years 2008 – 2027, MUNI has a network of 80 transit lines and provides access to most locations within the City and County of San Francisco (the “City”) 24 hours a day, 365 days a year. According to the SFMTA Service Planning staff, MUNI maintains approximately 4300 transit stops throughout the City and County of San Francisco. MUNI carries over 672,000 riders each weekday, totaling over 204 million annual passengers trips, making MUNI the most heavily used transit system in the Bar Area and the eighth in the Nation. According to the SFMTA's San Francisco Transportation Fact Sheet (May 2008), in 2006, 30.3% of San Francisco residents relied upon MUNI as their means of transportation to and from work.

7. **MUNI's Operating Budget.** According to SFMTA's Finance staff, MUNI's 2008-2009 and 2009-2010 Operating Budget includes revenues from transit fares, operating grants, parking and traffic fees and fines, and other revenues such as advertising and interest income. For the same time period, MUNI's Operating Budget includes expenditures from seven major categories: salaries and benefits, contracts and other services, materials and supplies, equipment and maintenance, rent and building, insurance and claims and work orders to other City departments. Below are the revenue and expenditure projections for both years:

**Revenue Category**

	<b>2008-2009</b>	<b>2009-2010</b>
Transit Fares	\$144,017,496	\$160,614,850
Operating Grants	152,081,480	134,281,480
Parking and Traffic Fees & Fines	238,958,118	256,541,697
Other (Advertising, Interest, Rent)	20,844,917	24,179,917
Transfers & Fund Balance	228,675,511	242,535,287
Taxi Fees	2,201,729	2,219,729
Total	\$786,779,251	\$820, 372,960

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**Expenditure Category**

	<b>2008-2009</b>	<b>2009-2010</b>
Salaries & Benefits	\$484,317,574	\$510,785,131
Contracts & Other Services	65,775,667	68,580,343
Materials & Supplies	41,831,237	43,054,703
Equipment & Maintenance	51,060,390	49,043,696
Rent & Building	11,114,935	11,503,958
Insurance & Claims	61,486,614	63,643,046
Reserve	10,000,000	10,350,000
Services from City Departments	61,192,834	63,402,083
Total	\$786,779,251	\$820,372,960

8. **Request for Proposals.** On February 1, 2007, the SFMTA issued a Request for Proposal ("RFP") seeking a company to design, supply, construct, maintain and repair transit shelters within the City during the term of the proposed contract. The SFMTA received 4 proposals.

9. The SFMTA created a Selection Committee and Technical Advisory Team of SFMTA and other City employees to review the proposals. The Selection Committee and Technical Advisory Team were made up of experts in, among other things, traffic safety, maintenance, disability access, and design and esthetics. Below is the list of the Selection Committee and Technical Advisory Team members:

**Selection Committee Members**

Debra Johnson	MTA Chief of Staff, Director of External Affairs
Sonali Bose	MTA Director of Finance/CFO
Jennifer Hamilton	MTA Chief Information Officer/Dir. Information Technology
Bond Yee	MTA Director of Parking and Traffic

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**Technical Advisory Team Members**

Jamie Osborne	MTA Accessible Services
Ted Aranas	MTA Ways and Structures
Kylie Grenier	MTA IT Program Manager
Dan Rosen	MTA Transportation Planning and Development
Henry Li	MTA Budget Manager
Marisa Espinosa	MTA Manager, Strategic Policy Initiatives,
Scott Broady	MTA DPT Traffic Engineering
Dan Sider	Mayor's Office of Greening
Nancy Gonchar	Interim Director, Arts Commission
Mohammed Nuru	Deputy Director, Department of Public Works

10. On June 19, 2007, the SFMTA Board of Directors authorized the SFMTA's Executive Director/CEO to enter into negotiations with the highest-ranked compliant proposer, Clear Channel Outdoor Inc. ("Clear Channel").

11. **Transit Shelter Advertising Agreement.** On September 4, 2007, the SFMTA Board of Directors adopted Resolution No. 07-149 authorizing the Executive Director/CEO of the SFMTA to execute the Transit Shelter Advertising Agreement between the City and County of San Francisco and Clear Channel ("Transit Shelter Advertising Agreement"). On October 23, 2007, the San Francisco Board of Supervisors gave final approval to Ordinance No. 240-07 approving the Transit Shelter Advertising Agreement. The Mayor approved Ordinance No. 240-07 on October 29, 2007. The Transit Shelter Advertising Agreement went into effect on December 10, 2007. A true and correct copy of the Transit Shelter Advertising Agreement is attached as Exhibit A.

12. **Existing Transit Shelters.** As set forth in Exhibits A, B-1 and B-2 of the Transit Shelter Advertising Agreement, there were 1063 existing transit shelters on December 10, 2007, the effective date of the Transit Shelter Advertising Agreement. Of the 1063 existing transit shelters on that date, advertising would have been allowed on up to 697 transit shelters ("Commercial Shelters") and not allowed on 366 shelters ("Noncommercial Shelters"). There were also 8 historic transit shelters that were Noncommercial Shelters and 34 kiosks on that date.

13. **Replacing Existing Transit Shelters.** The Transit Shelter Advertising Agreement requires Clear Channel to replace existing transit shelters and may require Clear Channel

1 to install new transit shelters. Under Section 4.1.2 Clear Channel is required to maintain a minimum  
 2 of 1100 transit shelters and is allowed to maintain up to 1500 transit shelters and a minimum of 39  
 3 and a maximum of 150 Commercial Kiosks.

4       **14. Limits on Advertising in Transit Shelters.** The Transit Shelter Advertising  
 5 Agreement limits the number of structures on which Clear Channel can place advertising. Under  
 6 Section 4.1.2, upon the completion of construction for the new shelters and kiosks under the Transit  
 7 Shelter Advertising Agreement, "there shall be one Noncommercial Structure for every two  
 8 Noncommercial Structures [other than shelters on high-level boarding platforms]." Thus, if Clear  
 9 Channel installs the minimum number of transit shelters under the Transit Shelter Advertising  
 10 Agreement, there could be 737 transit shelters with advertising and 367 transit shelters without  
 11 advertising. If Clear Channel installs the maximum number of transit shelters under the Transit  
 12 Shelter Advertising Agreement, there could be 1000 transit shelters with advertising and 500 transit  
 13 shelters without advertising.

14       **15.** The Transit Shelter Advertising Agreement also limits where the advertising may be  
 15 placed on a transit shelter. Under Section 6.2, Clear Channel is only authorized "to use the  
 16 'downstream' side wall (furthest from approaching transit vehicles) or the back panel of any  
 17 Commercial Shelter to display advertising material." In addition, except in limited locations, Clear  
 18 Channel is prohibited from placing advertisements on more than one wall of any transit shelter.  
 19 Finally, any advertisements may not exceed twenty-four square feet.

20       **16.** Under the Transit Shelter Advertising Agreement, the SFMTA also retained the right  
 21 to place transit information on every transit shelter and kiosk. Under Section 5.1, the SFMTA  
 22 "reserves the right to place transit information, including maps, schedules, and service bulletins, on  
 23 every [transit shelter and kiosk]."

24       **17. Location of Transit Shelters.** Under the Transit Shelter Advertising Agreement  
 25 the SFMTA retained the right to designate the locations of all transit shelters and kiosks (other than  
 26 transit shelters and kiosks on Port property). Under Section 4.2.1, the SFMTA "has sole discretion to  
 27 designate the locations of all Structures, including which sites are available for advertising" and "does  
 28 not guarantee any specific site for any particular Structure."

1           18.     **Cost of Installing Transit Shelters.** Clear Channel recently estimated that the cost to  
2 manufacture a new version of the existing transit shelter would cost \$9,000; installation would cost at  
3 least \$2,500 more; neither amount includes power to the shelter.

4           19.     **Maintenance and Repair of Transit Shelters.** Under Section 9.4 of the Transit  
5 Shelter Advertising Agreement, Clear Channel is required to inspect all transit shelters and kiosks a  
6 minimum of twice per week, except for transit shelters and kiosks in certain locations which are  
7 inspected three times per week. In the course of each inspection of a Shelter or Kiosk, Clear Channel  
8 is required to "remove all Graffiti, stickers, posters, litter, dust, dirt, and weeds from each Shelter or  
9 Kiosk, and from a five-foot radius surrounding the Shelter or Kiosk."

10          20.     Under Section 9.5.1 of the Transit Shelter Advertising Agreement, Clear Channel is  
11 required to "repair any damage, including, but not limited to, damage from vandalism or Graffiti,  
12 found on or around the Shelter or Kiosk" within 48 hours. In addition, Clear Channel is required to  
13 repair, replace or remove "any damage to a Shelter or Kiosk that is of a hazardous nature (e.g., broken  
14 glass, light sources that need replacing) within 24 hours." "If the Shelter or Kiosk is destroyed, [Clear  
15 Channel] shall remove the Shelter or Kiosk remains within 24 hours" and "replace the Shelter or  
16 Kiosk within 15 days."

17          21.     **Cost of Maintaining and Repairing Transit Shelters.** In 2007, the SFMTA did a  
18 Prop J analysis for the Controller's Office. The SFMTA estimated that the staff costs for building,  
19 maintaining and repairing shelters would run from \$3.9 million to \$4.7 million.

20          22.     **Design of Transit Shelters and Kiosks.** Under Section 8 of the Transit Shelter  
21 Advertising Agreement, Clear Channel is required to provide new master designs to the SFMTA for  
22 the new transit shelters and kiosks.

23          23.     Under Section 8.1(d) of the Transit Shelter Advertising Agreement any design "must  
24 be approved by [the San Francisco Municipal Transportation Agency], the Arts Commission, the  
25 Port, the Recreation and Park Department, and any other department with jurisdiction."

26          24.     In order to create safe transit shelters for MUNI riders, passing vehicle operators and  
27 the public, the Transit Shelter Advertising Agreement imposed minimum design and placement  
28

1 specifications for new transit shelters and kiosks. Under Section 8.1.2(a), Clear Channel is required  
2 to design and construct transit shelters and kiosk to meet certain minimum design requirements.

3 25. For example, under Section 8.1.2(a)(ix) each transit shelter and kiosk must be  
4 designed and constructed to ensure compliance with the Americans with Disabilities Act.

5 26. As another example, under Section 8.1.2(a)(xi), each transit shelter "must not be so  
6 illuminated as to be hazardous to passing vehicle operators."

7 27. **Compliance with Local Ordinances.** The SFMTA is required to comply with  
8 all zoning and permitting requirements when installing transit shelters and kiosks on the public right-  
9 of-way. Under the San Francisco Charter, "the planning and zoning provisions of [the] Charter and  
10 the Planning Code as they may be amended from time to time shall apply to all real property owned  
11 or leased by the [San Francisco Municipal Transportation Agency]." San Francisco Charter, Section  
12 8A.110.

13 28. With respect to other local requirements, Clear Channel is required to comply with all  
14 local ordinances in the design and construction of the new transit shelters and kiosks. Under Section  
15 8.2, Clear Channel "shall be responsible for obtaining, at is sole cost, all required permits and  
16 approvals from City departments or other public entities before commencing construction for any  
17 [transit shelter or kiosk]."

18 29. **Approval by San Francisco Arts Commission.** Under San Francisco Charter  
19 Section 5.103, the San Francisco Arts Commission has the power to review and approve "the design  
20 of all public structures, any private structure which extends over or upon any public property and any  
21 yards, courts, setbacks or usable open space which are an integral part of any such structures."

22 30. The San Francisco Arts Commission Civic Design Review Committee has established  
23 a three-phase process for the review and approval of any public structures. Because the transit  
24 shelters and kiosks are public structures on City property, Clear Channel is required to obtain the Arts  
25 Commission's approval for the new designs for the transit shelters and kiosks. I represented the  
26 SFMTA before the Civic Design Review Committee during the review process.

27 31. Phase 1 of the process deals with the review and approval of the conceptual and  
28 schematic form of the project. Phase 2 of the process deals with the review of the project in more

1 detail and addresses concerns raised in Phase 1. Phase 3 deals with the review of contract documents  
2 to ensure that the project conforms to the Phase 2 submission.

3 32. SFMTA staff first met with Arts Commission staff to begin the design review process  
4 on July 19, 2007. The Civic Design Review Committee held a special meeting on September 17,  
5 2007, to receive an informational presentation about the transit shelter and kiosk designs. On October  
6 15, 2007, the Civic Design Review Committee gave Phase 1 approval to the designs for new transit  
7 shelters and kiosks.

8 33. On December 3, 2007, the San Francisco Arts Commission gave Phase 2 approval to  
9 Clear Channel's designs for new transit shelters and kiosks.

10 34. On February 25, 2008, the Civic Design Review Committee gave Phase 3 approval to  
11 Clear Channel's designs for new transit shelters and kiosks with two stipulations, followed by Arts  
12 Commission approval of Phase 3 on March 3, 2008. Due to certain design challenges in meeting the  
13 stipulations, Clear Channel modified the designs and re-submitted them to the Civic Design Review  
14 Committee. On June 16, 2008, the Civic Design Review Committee gave approval to the changes to  
15 the previously approved Phase 3 designs for new transit shelters and kiosks, followed by Arts  
16 Commission approval on July 7, 2008.

17 35. **Payments Under the Transit Shelter Advertising Agreement.** Under the Transit  
18 Shelter Advertising Agreement, Clear Channel is required to pay the San Francisco Transportation  
19 Agency a minimum annual guarantee ("MAG") each year, or a percentage of gross revenues,  
20 whichever is higher. The MAG increases over the term of the contract. Section 7.1.1(b)(iv) sets forth  
21 the MAG for each year of the agreement.

22 36. Under Section 8A.109 of the San Francisco Charter the SFMTA is required to  
23 diligently seek to develop new sources of funding for the Agency's operations. Clear Channel's  
24 payments go into MUNI's Operating Budget and support, among other things, low transit fares for  
25 MUNI riders. MUNI's transit fares are significantly lower compared to other agencies locally and  
26 nationally.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed on August 22, 2008

DECLARATION OF GAIL R. STEIN  
USDC No. C07-6067 JSW

**SIGNATURE ATTESTATION**

(U.S.D.C. N.D. Cal. General Order 45, Section X.B.)

I obtained the concurrence in the filing of this document from the signatory of this declaration, in compliance with U.S.D.C. N.D. General Order 45, Section X.B.

Dated: August 29, 2008

DENNIS J. HERRERA  
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KRISTEN A. JENSEN  
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By:                     /S/                    .  
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